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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,277	10/31/2000	Harrison G. Purvis	24104A	1667

27975 7590 06/01/2004

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EXAMINER

MILLER, WILLIAM L

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/703,277

Applicant(s)

PURVIS ET AL.

Examiner

William L. Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11 is/are allowed.
- 6) ☒ Claim(s) 12 and 26 is/are rejected.
- 7) ☒ Claim(s) 13-22, 27 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 02-10-2004, including the statement as to the loss or inaccessibility of the original patent, has been entered.
2. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,842,685 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

### *Claim Objections*

3. Claim 26 is objected to because of the following informalities: line 18, after "connector" insert --portion--. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 12 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thurnauer (US#4150907) in view of Chamberlain (US#3757894).

6. Regarding claim 12, Thurnauer discloses a temporary guardrail system comprising: a plurality of upright stanchions 10; a plurality of vertical spaced apart side rails 11; an anchor bracket (col. 2, line 65); and a means 13 for rotatably connecting the side rails to the stanchions whereby each respective side rail can rotate in a horizontal plane and pivot in a vertical plane, the connecting means comprising a first connector portion 14.

7. Thurnauer fails to disclose a means for telescopically adjusting the side rails as claimed by the applicant. Chamberlain discloses a similar system including a means for telescopically adjusting the side rail 78,80 enabling the length adjustment of the rail. Therefore, as taught by Chamberlain, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Thurnauer to include a means for telescopically adjusting the side rail thereby allowing length adjustment of the rails.

8. Regarding claim 26, Thurnauer discloses temporary guardrail system comprising: a plurality of upright stanchions 10; an anchor bracket (col. 2, line 65); a plurality of side rails 11; and a plurality of rail connectors 13 for rotatably connecting the side rails to the stanchions

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whereby each respective side rail can rotate in a horizontal plane and pivot in a vertical plane, each rail connector comprising a first connector portion 14 and a second connector portion 15.

9. Thurnauer fails to disclose the rails being telescopic as claimed by the applicant. Chamberlain discloses a similar system including telescopic side rails 78,80. Therefore, as taught by Chamberlain, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Thurnauer to include a means for telescopically adjusting the side rails thereby allowing length adjustment of the rails.

***Allowable Subject Matter***

10. Claims 1-11 are allowed.

11. Claims 13-22, 27, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

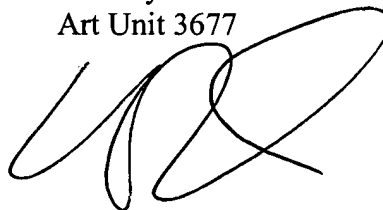
Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is 703 305 3978. The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703 306 4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William L. Miller  
Primary Examiner  
Art Unit 3677

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned below the printed name of the examiner.

WLM  
05-26-2004